

Against Defendants Muenzenmeyer and Jacobitz:

1) Alleged Violation of 42 USC § 1983 as to:

a) Continued detention and handcuffing of Plaintiff after the investigation is concluded

b) Initial handcuffing of Plaintiff

c) Continued handcuffing of Plaintiff after Officers Hafen and Ramirez-Murillo returned with the D Personnel.(liability for summary judgment was granted)

d)

2) False imprisonment

3) Battery

4) Defamation

Against Defendant Muenzenmeyer:

Alleged Trespass to chattels

Against Defendants Hafen and Ramirez-Marillo:

1) Alleged Violation of 42 USC § 1983 as to:

a) Continued detention of Plaintiff after returning with The D personnel

b) Continued handcuffing of Plaintiff after returning with The D personnel

Against Defendant LVMPD:

1) Alleged Violation of 42 USC § 1983 as to handcuffing of Plaintiff

2) Alleged Vicarious liability for False imprisonment

3) Alleged Vicarious liability for Battery

4) Alleged Vicarious liability for Defamation

5) Alleged Vicarious liability for Trespass to chattels

As set out above, the issue of damages remains as to Defendants Muenzenmeyer and Jacobitz on the granting of partial summary judgment of liability on the claim of a violation of 42 USC § 1983 as to the continued handcuffing of Plaintiff after Officers Hafen and Ramirez-Marillo returned with the D Personnel, and any other surviving claim upon which the jury determines liability. .

II.

Statement of jurisdiction:

Jurisdiction is based upon federal question, 28 USC § 1331, in that Plaintiff has pled claims for violations of 42 USC § 1983. As to the related state cases, the Court has pendant jurisdiction, 28 USC § 1367(a). The matter is before this Court on the Defendants' removal of the claims which were initially filed in the Clark County District Court.

III.

The following facts are admitted by the parties and require no proof:

1. Defendants, Muenzenmeyer, Jacobitz, Hafen, Ramirez-Marillo and LVMPD acted under color of law in their encounter with Plaintiff.

IV.

The following facts, though not admitted, will not be contested at trial by evidence to the contrary:

1. On October 10 2019, Plaintiff worked at the Fremont Street Experience for a vacation company known as TLC on the date of the events at issue.

2. Plaintiff was at work at the time of the stop, and his job was to raise interest and gather time-share leads for his employer by talking to persons on Fremont Street and directing them to other employees at sales kiosks (in this case, inside a proximate store front).

V.

The following are the issues of fact to be tried and determined at trial. [Each issue of fact must be stated separately and in specific terms.]

Plaintiff's Issues of Fact:

42 USC § 1983:

1. Whether Defendants Muenzenmeyer and Jacobitz violated Plaintiff's Constitutional right to be free of unreasonable seizure when they continued to detain Plaintiff longer than necessary to investigate suspected criminal activity and instead held him for the D's private purpose?

2. Whether Defendants Hafen and Ramirez-Marillo violated Plaintiff's Constitutional right to be free of unreasonable seizure when they continued to participate in the detention of the Plaintiff longer than necessary to investigate suspected criminal activity after returning to the scene with the D personnel?

3. Whether Defendants Muenzenmeyer and Jacobitz violated Plaintiff's Constitutional right to be free of unreasonable seizure when they initially handcuffed Plaintiff?

4. Whether Defendant LVMPD had an unofficial custom or practice of placing *Terry* stop subjects, including Plaintiff, in handcuffs, in violation of Plaintiff's Constitutional right to be free of unreasonable seizure?

False imprisonment:

6. Whether Defendants Muenzenmeyer, Jacobitz, Hafen, Ramirez-Marillo and LVMPD restrained Plaintiff under probable imminence of force without any legal cause or justification during any time throughout the detention of Plaintiff?

Battery:

1 7. Whether Defendants Muenzenmeyer, Jacobitz, Hafen, Ramirez-Marillo and
2 LVMPD used more force than necessary on Plaintiff by handcuffing Plaintiff and continuing to
3 keep Plaintiff in handcuffs throughout the encounter?

4 Defamation:

5 8. Whether Defendants Muenzenmeyer, Jacobitz, Hafen, Ramirez-Marillo and
6 LVMPD published a defamatory per se statement to patrons in the D that Plaintiff was a criminal
7 by holding him in handcuffs after the completion of their *Terry* stop as patrons observed him?

8 9. Whether the conduct of Defendants Muenzenmeyer, Jacobitz, Hafen, Ramirez-
9 Marillo and LVMPD was not privileged, or at least negligent, when they continued to detain and
10 hold Plaintiff without reasonable suspicion?

11 Trespass to chattels:

12 10. Whether Defendants Muenzenmeyer and LVMPD dispossessed Plaintiff of his
13 identification by giving the identification to The D through Thompson without Plaintiff's consent?

14 Punitive damages:

15 12. Whether the conduct of Defendants Muenzenmeyer, Jacobitz, Hafen, Ramirez-
16 Marillo and LVMPD was motivated by evil motive or intent or involved reckless or callous
17 indifference to the federally protected rights of Plaintiff?

18 13. Whether, by clear and convincing evidence, Defendants Muenzenmeyer, Jacobitz,
19 Hafen, or Ramirez-Marillo and LVMPD are guilty of oppression, fraud or malice in a violation of
20 Plaintiff's civil rights?

21 14. Whether, by clear and convincing evidence, Defendants Muenzenmeyer, Jacobitz,
22 Hafen, Ramirez-Marillo and LVMPD are guilty of oppression, fraud or malice in the commission
23 of false imprisonment, battery or defamation?

24 Damages:

15. The amount of damages to be awarded Plaintiff as against Defendants Jacobitz and Muenzenmeyer for the continued handcuffing of Plaintiff after the return of the warrant information.

16. The amount of damages to be awarded Plaintiff on any causes of action for which the jury finds liability.

17. The amount of damages to be awarded Plaintiff should the jury find liability for punitive damages on the Plaintiff's civil rights claims.

18. The amount of damages to be awarded Plaintiff should the jury find liability for punitive damages on the state law claims.

Other Issues of Fact:¹²

¹ Plaintiff, in its initial proposed pretrial order, largely included the following facts as facts which, while not admitted, there would be no evidence to contradict them. Defendants disagreed and, as such, they are now included as disputed facts. Nonetheless, the facts marked with an asterisk appear on authenticated video from Defendants' body cameras. Plaintiff is at a loss as to how the contrary could be proved or evidence admitted because authenticated video conclusively demonstrates the discernable facts from the video. *People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 615, 621 (1995)(Items captured on video are **conclusively** true) *Lee v. City of Norwalk, Ohio*, No. 3:11 CV 897, 2012 WL 3778975, at *2 (N.D. Ohio Aug. 30, 2012), *aff'd*, 529 F. App'x 778 (6th Cir. 2013) (authenticated video properly **controls over conflicting statements** in a summary judgment motion); *Parker v. Town of Woodworth*, 160 So. 3d 1113, 1119 (La. App. 2015)(An admitted video **"tells it all"** concerning the facts exhibited); *Stevens v. Mkt. Basket Stores, Inc.*, 176 So. 3d 1065, 1070 (La. App. 2015)("[T]he surveillance video **conclusively** establishes that Ms. Stevens slipped in the rice twenty-two seconds before she slipped in it again and fell . . ."); *In re Bailey*, No. 2006-386, 2008 WL 2793848, at *2 (Vt. Apr. 2008)(An authenticated video showing unambiguous events would constitute **"conclusive direct evidence"** of the events portrayed); *accord Scott v. Harris*, 550 U.S. 372, 380 (2007); *Griffin v. Hardrick*, 604 F.3d 949, 955 (6th Cir. 2010); *State v. Smith*, No. 05-11-00742-CR, 2012 WL 1059703, at *4 (Tex. App. Mar. 30, 2012)(video evidence established the facts over contrary testimony); *Hall v. State*, 829 S.W.2d 407, 408 (Tex. App. 1992). (Emphasis added).

² Defendants disagree with the Plaintiff's position set out in footnote 2 as Plaintiff's proposed admitted facts are largely argumentative interpretations of "facts" set out to favor the Plaintiff's position. For example, Nos. 6, 9 and 19, among others, involve disputed facts that are not, as alleged by Plaintiff, conclusively demonstrated by the BWC.

1 1. Whether, as Plaintiff approached the restroom at The D which is at the top of an
2 escalator, he was met at the top of an escalator by Defendant Jacobitz who pointed at a wall and
3 directed Plaintiff to face the wall?

4 2. Whether Plaintiff complied without resistance, on the initial stop by Jacobitz?*

5 3. Whether Jacobitz immediately further seized Plaintiff, grabbing the Plaintiff's
6 hands, after Plaintiff complied with his demand to stop?*

7 4. Whether the D allegedly supplied the police with the photo of Plaintiff having a
8 discussion with two men on Fremont Street proximate to the D.*

9 5. Whether the alleged informant, the security personnel at The D, knew for some
10 time prior to the alleged information given to the police that Plaintiff was employed on Fremont
11 Street as a person who held a job requiring him to speak with persons on Fremont Street?

12 6. After stopping Plaintiff was any physical resistance or indication of physical
13 resistance exhibited by Plaintiff?*

14 7. Was Plaintiff subjected to a seizure for sixteen minutes and twenty-four seconds by
15 Muezenmeyer and Jacobitz, and held in handcuffs in a public area for the functional entirety of
16 this detention.*

17 8. Whether approximately 9 and a half minutes into the detention, Muezenmeyer
18 tells Jacobitz that a scope has been run on Plaintiff, there are no wants or warrants and that
19 Plaintiff's information checks out?.*

20 9. Whether, at that point, Defendants had completed the investigative stop of Plaintiff,
21 and were solely holding him to summon The D personnel and give them an opportunity to provide
22 Plaintiff a trespass warning under NRS § 207.200 as represented by Jacobitz to Plaintiff and to
23 Muezenmeyer?*

1 10. Did Defendant, Jacobitz, affirmatively acknowledge that the Terry stop had
2 ended?*

3 11. After having been informed that the police had completed their investigation and
4 were done with their portion of the stop, was there a continuing holding of Plaintiff in handcuffs
5 in a public place by Defendants which was expressly and solely for the purpose of finding security
6 personnel at The D to see if they want to provide Plaintiff with a trespass warning pursuant to NRS
7 § 207.200, a purely private concern of The D and for which no police interaction is necessary
8 under NRS § 207.200 and continuing to hold Plaintiff while that trespass warning was given?
9

10 12. Approximately 12 minutes since the beginning of the detention, when Plaintiff
11 voices a concern about being held and the delay in his release, did Jacobitz state to Plaintiff
12 (misrepresenting the law and his constitutional authority), “We’ll take up to an hour [continuing
13 to hold Plaintiff] if we need to. So that’s the right that we have.”*

14 13. Did Hafen repeat this erroneous perspective of the law to Plaintiff?*

15 14. Approximately thirteen minutes into the detention, Did Officer Muenzenmeyer take
16 Plaintiff’s identification out of Plaintiff’s wallet, and provides it to private security at The D, who
17 accepts the identification and transcribes the information from it at approximately thirteen minutes
18 into the detention?*

19 15. Whether, while still being held in police handcuffs in a public place, security from
20 The D informed Plaintiff that they are trespassing him, and when Plaintiff questions personnel of
21 The D why they are undertaking this action, did Defendant Jacobitz then say to Plaintiff, “You
22 want to make it an issue, we’ll just take you to jail for it.”?*

23 16. Did Jacobitz’ statement in the preceding paragraph constitute threat of force and
24 unauthorized use of authority by Jacobitz to gain unwarranted compliance from the Plaintiff, and
25 was it constructed to place Plaintiff in unnecessary fear of the encounter?
26
27
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1 17. Did the foregoing statement by Jacobitz violate a representation he made to the
2 Plaintiff that the Plaintiff would be told of the reason for a trespass warning if he was given a
3 trespass warning?*

4 18. Is it correct that following Plaintiff being given a trespass warning by The D, in full
5 accord with the representations of Defendant Jacobitz and no further investigation occurring in the
6 interim, Plaintiff is released further indicating that Plaintiff was being held in handcuffs solely for
7 the purpose of seeking out a third-party and allowing that third-party to provide a private trespass
8 warning to Plaintiff if they so desire?
9

10 19. Whether the investigation into Plaintiff's suspected criminal activity continued
11 only up to the point where D security arrived to trespass him, or was it over at some prior point
12 when Jacobitz admitted that they had completed their investigation?*

13 20. When did the investigation of Plaintiff end?
14
15

16 Defendants' Issues of Fact:

17 1. Whether it was reasonable under the circumstances to initially place Plaintiff in
18 handcuffs?

19 2. Whether the circumstances of the initial encounter with Plaintiff gave rise to officer
20 safety concerns and/or concerns for the safety of others

21 3. Whether Plaintiff exhibited behavior that could create officer safety concerns or
22 concerns for the safety of others?
23

24 4. Whether the investigation into Plaintiff's suspected criminal activity continued up
25 to the point where D security arrived to trespass him?

26 5. Whether the investigation into Plaintiff's suspected criminal activity continued for
27 a period after the D security arrived to trespass him?
28

1 6. When did the investigation end?

2 7. At any point of the detention, up to the time that the D security arrived, was the
3 handcuffing unlawful?

4 8. Whether Plaintiff suffered damage from being handcuffed?

5 9. If so, what is the nature and extent of the damage from being handcuffed?

6 10. Whether Officers Hafen and Ramirez-Marillo were integrally involved in any
7 alleged unlawfully prolonged detention or handcuffing?

8 11. Whether Plaintiff suffered damage from any alleged unlawfully prolonged
9 detention?

10 12. If so, what is the nature and extent of the damage from the alleged unlawfully
11 prolonged detention?
12

13 13. Whether there is evidence to show a widespread or longlasting custom or practice
14 of LVMPD to place anyone detained into handcuffs?.

15 14. Whether Plaintiff consented to his ID being given to D security?.

16 15. Whether Plaintiff was deprived of the use of his ID for a substantial time?
17

18 16. Whether Plaintiff's ID was impaired or harmed.

19 17. Whether Plaintiff suffered damage from Officer Munzenmeyer's handing of his ID
20 to the D security?

21 18. Whether the use of handcuffs was a reasonable use of force under state law?

22 19. Did Defendants' unlawful use of handcuffs communicate to others that Plaintiff
23 was a criminal?

24 20. Was the use of handcuffs privileged?
25

26 21. Was Plaintiff damaged as a result of alleged defamation?

27 22. If so, what is the nature and extent of Plaintiff's damages?
28

23. Did any Defendant act with oppression, fraud or malice?

24. If any of Defendants' Issues of Fact are best characterized as Issues of Law, they should be so considered.

VI.

The following are the issues of law to be to be tried and determined at trial.

Plaintiff's Issues of Law:

1. Whether the law allows handcuffing during a *Terry* stop when the individual is non-physical and compliant with the directions of the authority making the stop?
2. When did the investigation end as a matter of law?
3. If so, what is the nature and extent of the damage from the alleged unlawfully prolonged detention.
4. Whether there is evidence to show a widespread or longlasting custom or practice of LVMPD to place anyone detained into handcuffs.
5. Whether Plaintiff consented to his ID being given to D security.
6. Whether Plaintiff was deprived of the use of his ID for a substantial time.
7. Whether Plaintiff's ID was impaired or harmed.
8. Whether Plaintiff suffered damage from Officer Munzenmeyer's handing of his ID to the D security.
9. Whether the use of handcuffs was a reasonable use of force under state law.
10. Does Defendants' unlawful use of handcuffs communicate to others that Plaintiff was a criminal?
11. Was the use of handcuffs privileged?
12. Was Plaintiff damaged as a result of alleged defamation?
13. If so, what is the nature and extent of Plaintiff's damages?

1 14. Did any Defendant act with oppression, fraud or malice?

2 15. If any of Defendants' Issues of Fact are best characterized as Issues of Law, they should
3 be so considered.

4 16. Does the duration of the seizure of a driver's license such that persons not entitled to
5 the information therefrom can gain that information satisfy any "substantial time"
6 durational requirement. None. (The Court's Order Granting in Part and Denying in
7 Part Motions for Summary Judgment [Document 71] addresses the law of the case

8 17. Can state law allow handcuffing beyond that authorized by the Constitution?

9 18. Was any defamation of Plaintiff correctly characterized as defamation *per se*?
10
11

12 Defendants' Issues of Law:

13 1. Whether Officer Jacobitz violated Plaintiff's rights when he initially placed
14 Plaintiff into handcuffs.

15 2. Whether Officer Jacobitz violated Plaintiff's rights by leaving Plaintiff in handcuffs
16 during his detention.

17 3. Whether Officer Munzenmeyer violated Plaintiff's rights by leaving Plaintiff in
18 handcuffs during his detention.

19 4. Whether Officers Hafen and Ramirez-Murillo violated Plaintiff's rights by leaving
20 Plaintiff in handcuffs after the D Security arrived.

21 5. Whether the initially lawful detention was unlawfully prolonged in violation of
22 Plaintiff's rights.

23 6. Whether Officers Hafen and Ramirez-Murillo violated Plaintiff's rights by
24 integrally participating in an unlawfully prolonged detention after D Security
25 arrived.
26
27
28

7. Whether Plaintiff was dispossessed of his ID by Officer Munzenmeyer.
8. Whether Plaintiff was defamed by Officers as a result of being handcuffed in the casino.
9. Whether the use of the handcuffs was a privileged communication.
10. Whether the use of handcuffs was defamation per se.
11. Whether Plaintiff was battered by an unreasonable use of handcuffs.
12. Whether Plaintiff was falsely imprisoned .
13. Whether LVMPD violated Plaintiff's rights through an alleged widespread or longstanding custom or practice of handcuffing persons being detained.
14. Whether LVMPD is vicariously liable for the state law claims of Battery, False Imprisonment, and Defamation.
15. If any of Defendants' Issues of Law are best characterized as Issues of Fact, they should be so considered.

(a) The following exhibits are stipulated into evidence in this case and may be so marked by the clerk:

The parties have not yet reached any stipulations as to evidence.

- a. Plaintiff's exhibits.**
- b. Defendant's exhibits.**

(b) As to the following additional exhibits, the parties have reached the stipulations stated:

The parties have not yet reached any stipulations as to evidence.

- (1) Set forth stipulations on plaintiff's exhibits.**

(2) Set forth stipulations on defendant's exhibits.

(c) As to the following exhibits, the party against whom the same will be offered objects to their admission on the grounds stated:

(1) Set forth the plaintiff's exhibits and objections to them.

Please note that the following includes evidence Plaintiff intends to offer, as well as possible impeachment exhibits.

1. Body Cam Video Footage; Defendants have objections to the use of irrelevant sections of BWC footage.

2. McDonald's receipt

3. Weekly punch of Plaintiff's employer

4. Sign in sheet dated 10/10/17

5. Copy of employment file of Plaintiff and parking lot access card

6. Face page of www.TLCresorts.com with logo

7. Misdemeanor warning

8. Statement of Angel Sandoval; Defendants object as to relevance and hearsay.

9. Plaintiff's letter to personnel at the D, dated 10/11/17

10. Plaintiff's letter to Derek Stevens at the D, dated 10/24/17

11. Plaintiff's letter to John Fiato at the D, dated 10/31/17

12. Response from John Fiato at the D, dated 11/20/17

13. Plaintiff's complaint to Citizen Review Board and Internal Affairs

14. Response from Citizens Review Board dated 1/19/18

15. Citizen Review Board complaint

16. Citizen Review Board summary of complaint

17. Citizen Review Board statement of complaint

18. Finding of the Citizen Review Board, dated 1/19/18
19. Response from Internal Affairs, dated 11/3/17
20. Drock's Daily Log Full Report
21. Statement of John Fiato, dated 5/14/18
22. Drock's photograph of Plaintiff
23. Statement of Ray Thompson, dated 5/15/18
24. LVMPD's Policies and Procedures
25. Drock's trespass file for Plaintiff
26. Drock's daily log full report (surveillance)
27. Drock's daily log summary report (security)
28. Drock's photographs of Plaintiff
29. Pages from personnel file of Jeremy Jacobitz
30. Pages from personnel file of Brianna Muenzenmeyer
31. Pages from personnel file of Colton Hafen
32. Pages from personnel file of George Ramirez-Marillo
33. Las Vegas Metropolitan Police Department's Responses to Plaintiff's First

Interrogatories

34. Defendant, Drock Gaming, LLC Responses to Plaintiff Darius McCall's First

Interrogatories; Defendants object as to relevance, hearsay.

35. Defendant, Drock Gaming, LLC responses to Plaintiff, Darius McCall's Second

Set of Interrogatories; Defendants object as to relevance; hearsay.

36. Alan Zajic's Expert Report; Defendants object as to relevance, hearsay,

foundation and best evidence.

1 37. Alan Zajic's CV; Defendants object as to relevance, hearsay, foundation and best
2 evidence.

3 38. Alan Zajic's list of cases; Defendants object as to relevance, hearsay, foundation
4 and best evidence.

5 39. Alan Zajic's list of publications; Defendants object as to relevance, hearsay,
6 foundation and best evidence.

7 40. Alan Zajic's list of documents reviewed; Defendants object as to relevance,
8 hearsay, foundation and best evidence.
9

10 41. Alan Zajic's fee schedule; Defendants object as to relevance, hearsay, foundation
11 and best evidence.

12 42. Tommy J. Burns's Expert Report; Defendants object as to relevance, hearsay,
13 foundation and best evidence.
14

15 43. Tommy J. Burns's Supplemental Expert Report; Defendants object as to
16 relevance, hearsay, foundation and best evidence.
17

18 44. Tommy J. Burns's fee schedule; Defendants object as to relevance, hearsay,
19 foundation and best evidence.

20 45. Tommy J. Burns's CV; Defendants object as to relevance, hearsay, foundation
21 and best evidence.

22 46. Tommy J. Burns's list of prior testimony; Defendants object as to relevance,
23 hearsay, foundation and best evidence.
24

25 46. Tommy J. Burns's correspondence with counsel; Defendants object as to relevance,
26 hearsay, foundation, FRE 403, privilege and best evidence.
27
28

47. Pages from Tommy J. Burn's files; Defendants object as to relevance, hearsay, foundation and best evidence.

(2) Set forth the defendants' exhibits and objections to them. Please note that the following includes evidence Defendants intend to offer, as well as possible impeachment exhibits.

- a. Incident Recall [Bates LVMPD000001-000002] [Plaintiff objects as hearsay, cumulative, and self serving to the extent that the evidence is not credible].
- b. Unit Log [Bates LVMPD000003] Plaintiff objects on the same grounds.
- c. Trespass Citation to McCall [Bates LVMPD000005]
- d. McCall's Citizen Review Board Complaint Package [Bates LVMPD000006-000015]
- e. LVMPD Internal Summary of McCall's Citizen Review Complaint [Bates LVMPD000016-000018]
- f. Body Worn Camera Videos of Jacobitz, Munzenmeyer, Hafen, and Ramirez-Murillo [Bates LVMPD000028]
- g. LVMPD Policies and Procedures for Interaction with the Public, Detention, Person Stop, Trespass, and Citation Warnings [Bates LVMPD000029-000114]
- h. Training Logs of Officer Jacobitz [Bates LVMPD000115-000135, LVMPD000188-000208] See 1 above for objections.
- i.

- j. TLC Vacation Resorts Personnel File of Darius McCall [Bates LVMPD000139-000187]
- k. Training Logs of Officer Hafen Colton [Bates LVMPD000209-000220] *See* 1, above for objections.
- l. Training Logs of Officer Brianna Muzenmeyer [Bates LVMPD000221-000230] *See* 1, above for objections.
- m. Training Logs of Officer George Ramirez-Murillo [Bates LVMPD000231-000241] *See* 1, above for objections.
- n. Officer Jacobitz' Personnel File [Bates LVMPD000241-000253] *See* 1, above for objections.
- o. Officer Muzenmeyer's Personnel File [Bates LVMPD000254-000260] *See* 1, above for objections.
- p. Officer Hafen's Personnel File [Bates LVMPD000261-000266] *See* 1, above for objections.
- q. Officer Ramirez-Murillo's Personnel File [Bates LVMPD000267-000272] *See* 1, above for objections.
- r.
- s. Drock Gaming's Daily Log Full Report, DL 20170102551 [Bates McCALL00046-00047] *See* 1, above for objections
- t. Statement of John A. Fiato dated 5/14/18 [Bates McCALL00048] *See* 1, above for objections
- u. Photograph of Darius McCall [Bates McCALL00049]
- v. Statement of Raymond Thompson [Bates McCALL00050] *See* 1, above for objections

- w. October 31, 2017 letter from Darius McCall to The D Hotel
[Bates McCALL00051-00052]
- x. November 20, 2017 letter from John Fiato to Darius McCall
[Bates McCALL00053] *See* 1, above for objections
- y. The D Trespass File for Darius McCall [Bates McCALL00054-
00055] *See* 1, above for objections
- z. The D's Daily Log Full Report re Darius McCall [Bates
McCALL00056] *See* 1, above for objections
- aa. The D Security Daily Log Summary Report [Bates
McCALL00057-00065] *See* 1, above for objections
- bb. Three Color Photographs of Darius McCall [Bates
McCALL00067-00069] *See* 1, above for objections
- cc. Plaintiff's October 11, 2017 letter to John Fiato
- dd. Plaintiff's October 24, 2017 letter to Derek Stevens
- ee. January 19, 2018 letter regarding CRB findings to Plaintiff
- ff. LVMPD Summary of Internal Affairs Complaint [Bates
LVMPD000019-000027]
- gg. CRB Screening Panel Findings
- hh. LVMPD November 3, 2017 letter regarding investigation findings
- ii. Plaintiff's Responses to LVMPD's Interrogatories
- jj. Plaintiff's Responses to LVMPD's Requests for Admissions
- kk. Plaintiff's Responses to LVMPD's first and second Requests for
Production.

1 Plaintiff also objects to any attempted use of a prior statement by a party or the
2 representative of a party as hearsay not subject to an exception, but reserves the right to use
3 such statements as party admissions if deemed advisable by the Plaintiff.

4
5 (d) Electronic evidence: [State whether the parties intend to present electronic
6 evidence for purposes of jury deliberations.]

7 The Parties intend to present all or portions of the body cam video footage.

8 (e) Depositions:

9
10 (1) Plaintiff will offer the following depositions: [Indicate name of
11 deponent and identify portions to be offered by pages and lines and
12 the party or parties against whom offered.]

13 Plaintiff will present the deposition of Darius McCall as redacted for relevant and proper
14 evidence. Plaintiff, otherwise, intends to present testimony through live witnesses. Plaintiff
15 reserves the right to use the depositions taken in this matter as allowed pursuant to the Federal
16 Rules of Civil Procedure and the Federal Rules of Evidence.

17
18 (2) Defendant will offer the following depositions: [Indicate name of
19 deponent and identify portions to be offered by pages and lines and
20 the party or parties against who offered.]

21 Defendants will offer the deposition of anyone unavailable at the time of trial or for
22 impeachment purposes.

23 (f) Objections to Depositions:

24 (1) Defendant objects to plaintiff's depositions as follows: Defendants do not object to the
25 use of depositions as long as they are used for impeachment purposes only, or if it is
26 demonstrated that a witness is unavailable to testify.
27

Defendants are unaware of the sections of Plaintiff's deposition that Plaintiff intends to use.

Defendants reserve their rights to assert their objections.

(2) Plaintiff objects to defendant's depositions as follows:

None at this time.

VII.

The following witnesses may be called by the parties at trial:

(a) Provide names and addresses of plaintiff's witnesses.

1. Darius McCall
c/o Nersesian & Sankiewicz
528 S. Eighth Street
Las Vegas, NV 89101
2. Persons most knowledge/custodian of records of Drock Gaming, LLC
d/b/a The D re 1) incident at issue, 2) security, 3) surveillance, 4) media,
5) documents, 6) policies and procedures, 7) trespass file, 8) authentication
9) financial condition
c/o Brandon/Smerber Law Firm
139 E. Warm Springs Road
Las Vegas, NV 89119

and/or Dickinson Wright
8363 W. Sunset Road, Suite 200
Las Vegas, NV 89113
3. Raymond Thompson
c/o Brandon/Smerber Law Firm
139 E. Warm Springs Road
Las Vegas, NV 89119

and/or Dickinson Wright
8363 W. Sunset Road, Suite 200
Las Vegas, NV 89113
4. John Fiato
c/o The D
301 E. Fremont
Las Vegas, Nevada
5. Jeremy Jacobitz
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650

Las Vegas, Nevada 89135

6. Colton Hafen
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

7. Brianna Muenzenmeyer
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

8. George Ramirez-Marillo
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

9. Michael Souder
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

10. Person most knowledgeable/custodian of records of Las Vegas Metropolitan Police Department re 1) incident at issue, 2) media, 3) documents, 4) policies and procedures and 5) authentication
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

11. Plaintiff, Lakiesha McCall
c/o Nersesian & Sankiewicz
528 S. 8th St.
Las Vegas, NV 89101; Defendants object to any testimony by this previously undisclosed individual.

12. Person(s) Most Knowledgeable for TLC Resorts regarding Plaintiff's employment history and his job.

1 S. Main St. Floor 3
Las Vegas, NV 89101

(b) Provide names and addresses of Defendants' witnesses.

1. Defendant Officer Jeremy Jacobitz
c/o Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135

- 1 2. Defendant Officer Colton Hafen
2 c/o Kaempfer Crowell
3 1980 Festival Plaza Drive, Suite 650
4 Las Vegas, NV 89135
- 5 3. Andrew Walsh (as Person Most Knowledgeable of Las Vegas Metropolitan Police
6 Department regarding handcuffing and detention)
7 c/o Kaempfer Crowell
8 1980 Festival Plaza Drive, Suite 650
9 Las Vegas, NV 89135
- 10 4. Defendant Officer Brianna Muenzenmeyer
11 c/o Kaempfer Crowell
12 1980 Festival Plaza Drive, Suite 650
13 Las Vegas, NV 89135
- 14 5. Defendant Officer George Ramirez-Murillo
15 c/o Kaempfer Crowell
16 1980 Festival Plaza Drive, Suite 650
17 Las Vegas, NV 89135
- 18 6. Sergeant Michael Souder
19 c/o Kaempfer Crowell
20 1980 Festival Plaza Drive, Suite 650
21 Las Vegas, NV 89135
- 22 7. Person Most Knowledgeable of Drock Gaming, LLC d/b/a The D for authentication of
23 records, if necessary.
24 c/o Brandon Smerber Law Firm
25 139 E. Warm Springs Road
26 Las Vegas, NV 89119
27 -and-
28 Dickinson Wright
8363 West Sunset Road, Suite 200
Las Vegas, NV 89113
8. Raymond Thompson
c/o Brandon Smerber Law Firm
139 E. Warm Springs Road
Las Vegas, NV 89119
-and-
Dickinson Wright
8363 West Sunset Road, Suite 200
Las Vegas, NV 89113
9. John Fiato
c/o Brandon Smerber Law Firm

- 1 139 E. Warm Springs Road
2 Las Vegas, NV 89119
3 -and-
4 Dickinson Wright
5 8363 West Sunset Road, Suite 200
6 Las Vegas, NV 89113
- 7 10. Tommy Burns
8 P.O. Box 90155
9 Henderson, NV 89009
- 10 11. Staci Fason (to authenticate Incident Recall, CAD, and Unit Log, if needed)
11 c/o Kaempfer Crowell
12 1980 Festival Plaza Drive, Suite 650
13 Las Vegas, NV 89135
- 14 12. Adam Seely (to authenticate CRB Complaint documents, if needed)
15 c/o Kaempfer Crowell
16 1980 Festival Plaza Drive, Suite 650
17 Las Vegas, NV 89135
- 18 13. Lt. Allen Larsen (to authenticate Body Worn Camera footage, if needed)
19 c/o Kaempfer Crowell
20 1980 Festival Plaza Drive, Suite 650
21 Las Vegas, NV 89135
- 22 14. Tara Delp (to authenticate LVMPD Policies, if needed)
23 c/o Kaempfer Crowell
24 1980 Festival Plaza Drive, Suite 650
25 Las Vegas, NV 89135
- 26 15. Sgt. Brandon Conk (to authenticate Training Logs, if needed)
27 c/o Kaempfer Crowell
28 1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135
- 29 16. Jamie Frost (to authenticate Personnel Records, if needed)
30 c/o Kaempfer Crowell
31 1980 Festival Plaza Drive, Suite 650
32 Las Vegas, NV 89135

VIII.

***The Parties* offer these three trial dates: September 26, 2022; October 3, 2022; October 10, 2022.**

1 It is expressly understood by the undersigned that the court will set the trial of this matter
2 on one of the agreed-upon dates if possible; if not, the trial will be set at the convenience of
3 the court's calendar.

4 **IX.**

5 It is estimated that the trial will take a total of 5 days.

6 **X.**

7 **Other matters:**

8 Plaintiff expects to bring certain pretrial motions including the following Motions in
9 Limine:
10

- 11 a. Exclude any mention of Darius McCall's felony convictions prior to the
12 incident;
- 13 b. Exclude the Defendant's experts from testifying;
- 14 c. Exclude any mention of the October 1 shooting by the Defendants.
- 15 d. Exclude the self-serving employment records of the remaining individual
16 Defendants.
17

18 The parties expect to bring certain pre-trial motions, including motions in limine, if necessary
19 following the required meet and confer conference(s).

20 **APPROVED AS TO FORM AND CONTENT:**

21 /s/ Robert A. Nersesian

22 Robert A. Nersesian
23 Nevada Bar No. 2762
24 Thea Marie Sankiewicz
25 Nevada Bar No. 2788
26 **Nersesian & Sankiewicz**
27 528 S. Eighth Street
28 Las Vegas, Nevada 89118
Telephone: 702-385-5454
email: VegasLegal@aol.com
Attorneys for Plaintiff

1 /s/ Lyssa S. Anderson

2 Lyssa S. Anderson

3 Nevada Bar No. 5781

4 Ryan W. Daniels

5 Nevada Bar No. 13094

6 **Kaempfer Crowell**

7 1980 Festival Plaza Dr. Suite 650

8 Las Vegas, Nevada 89135

9 Telephone: 702-792-7000

10 email: landerson@kcnvlaw.com

11 **Attorneys for LVMPD Defendants**

12 **X.**

13 **ACTION BY THE COURT**

14 **This case is set for jury trial on September 26, 2022, at 9:00 a.m. in LV Courtroom 6C.**

15 **Calendar call will be held on September 20, 2022, at 9:00 a.m. in LV Courtroom 6C.**

16 **IT IS SO ORDERED:**

17 **Dated: April 11, 2022** _____

18 

19 **ANDREW P. GORDON**
20 **UNITED STATES DISTRICT JUDGE**